

REMARKS

Claims 1-3 were presented for examination and were pending in this application. In an *Office Action* mailed March 14, 2005, claims 1-3 were rejected. The rejected claims have not been amended. Applicant addresses Examiner's comments below

I. Rejection Under Nonstatutory Double Patenting

In page 2 of the Office Action, Examiner rejected claims 1-3 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11-17 of U.S. Patent No. 6,370,571. Examiner also indicated that the rejection can be overcome with a terminal disclaimer. Accordingly, Applicant has herewith filed a terminal disclaimer. Thus, Applicant submits that the rejection under nonstatutory double patenting is obviated.

II. Rejections Under § 102(e) and 103(a)

On page 3 of the Office Action, Examiner rejected claim 1 under 35 U.S.C. § 102(e) as being anticipated by Donahue (U.S. Patent No. 5,440,723). On page 4 of the Office Action, Examiner rejects claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Donahue in view of "Cable Modem Termination System – Network Side Interface Specification." Applicant respectfully traverses these rejections.

Section 102(e) entitles a person to a patent unless:

the invention was described in (1) an application for patent...by another filed in the United States before the invention by the application for patent (emphasis added)

The present application claims priority to U.S. Patent Application No. 09/427,778 as a continuation, and the '778 Application claims priority to U.S. Patent No. 6,370,571, filed on March 5, 1997, as a continuation-in-part. Donahue was filed on November 12, 1997. Because Donahue was not filed before the priority date of the present application, Donahue does not qualify as a proper reference under §102(e) and the rejection must be withdrawn. Applicant submits that independent claim 1, and dependent claims 2 and 3, are patentable over Donahue.

CONCLUSION

In sum, Applicants respectfully submit that the claims as presented herein, are patentably distinguishable over the cited references either alone or in combination (including references cited, but not applied). Therefore, Applicants request reconsideration and allowance of these claims.

In addition, Applicants respectfully invite Examiner to contact Applicants' representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

RESPECTFULLY SUBMITTED,

Date: August 26, 2005

By: 

Dorian Cartwright, Attorney of Record
Registration No. 53,853
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Phone: (650) 335-7247
Fax: (650) 938-5200